

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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TIMMY WALLACE,

Plaintiff,

-against-

CITY OF NEW YORK et al.,

Defendants.  
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**JENNIFER E. WILLIS, United States Magistrate Judge:**

In early April 2023, the Defendants filed a Motion on the Pleadings. Dkt. No. 46.

Plaintiff's Opposition was originally due May 15, 2023. Dkt. No. 49.

Then, in mid-May 2023, the attorney for the Plaintiff submitted a letter saying he intended to imminently withdraw from the case and requested an extension so that Plaintiff may prepare his Opposition by himself. Dkt. No. 50.

In that letter, Mr. Dratch indicated he intended to "file a formal motion to withdraw shortly." Dkt. No. 50. To date, it does not appear that a formal motion to withdraw was ever filed.

Therefore, by **July 20, 2023**, Mr. Dratch shall file a letter clarifying whether he is still representing the Plaintiff or Mr. Dratch shall submit a formal motion to withdraw.

Next, on June 20, 2023, Plaintiff filed a letter seeking leave to submit a third amended complaint. Dkt. No. 54.

On June 27, 2023, the attorney for the Defendants filed a letter opposing Plaintiff's request for leave to amend the complaint, claiming that the "proposed amendment, in sum, does not provide any additional facts that materially change his claims against Defendants." Dkt. No. 57.

That letter further sought clarity as to "whether Plaintiff's motion for leave to amend affects the briefing schedule for their Motion for Judgment on the Pleadings." Dkt. No. 57.

On July 6, 2023, Plaintiff filed a "Notice of Motion in Opposition to Defendants' Motion to Dismiss Pursuant to Rule 12(c)," which the Court construes as an Opposition to the Motion for Judgment on the Pleadings. This Opposition was timely filed, and **Defendants remain obligated to submit any Reply by July 24**, according to the previously set schedule. Dkt. No. 51.

That same day, Plaintiff also filed a Motion for Leave to File an Amended Complaint and an affidavit in support of the Amended Complaint. Dkt. Nos. 59.

In a recent decision, [Pettaway v. Nat'l Recovery Sols., LLC](#) 955 F.3d 299 (2nd Cir. 2020), the Second Circuit permitted a pending motion to dismiss to be determined based upon the facts alleged in an amended complaint. See [Pettaway](#), *supra* at 303 ("District courts in this Circuit have repeatedly explained that, when faced with an amended complaint, they may either deny a pending motion to dismiss as moot or consider the merits of the motion, analyzing the facts as alleged in the amended pleading.").

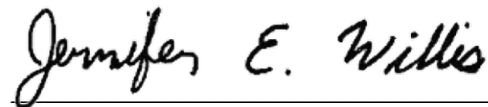
Because Mr. Wallace is currently incarcerated and faces substantial difficulties litigating this case (including handwriting each motion he submits to the Court) the Court concludes that the "just, speedy, and inexpensive" resolution of this action counsels in favor of granting leave to file the amended complaint and deciding

the Motion for Judgment on the Pleadings based upon the facts alleged in the submitted Third Amended Complaint. See [Santana v. City of New York](#), No. 15-cv-6715 (ER), 2018 WL 1633563 (S.D.N.Y. Mar. 29, 2018)(deciding a Rule 12(c) motion based upon the allegations in a *pro se* plaintiff's amended complaint); see also [Huebner v. Nissan Shapiro L. P.C.](#), No. 19-cv-05747 (HG) (PK), 2023 WL 2666874 (E.D.N.Y. Mar. 28, 2023) (citing Pettaway and ruling on the merits of the pending Rule 12(c) motion for judgment on the pleadings).

Therefore, while Defendants' deadline to file any Reply remains **July 24, 2023**, all other deadlines in the case are adjourned without a date until the pending Motion for Judgment on the Pleadings is resolved. After the Motion is resolved, if the case is not dismissed, the Parties will then be directed to confer and agree on a discovery plan.

SO ORDERED.

DATED: New York, New York  
July 12, 2023

A handwritten signature in black ink that reads "Jennifer E. Willis". The signature is written in a cursive, flowing style.

JENNIFER E. WILLIS  
United States Magistrate Judge